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MAR 17 1997

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	MM Docket No. 96-201
)	
Group Communications, Inc.)	
)	
Order to Show Cause Why the License)	
for Station KRGQ(AM) ¹)	
West Valley City, Utah)	

To: Administrative Law Judge
Joseph Chachkin

MASS MEDIA BUREAU'S COMMENTS
IN SUPPORT OF MOTION FOR SUMMARY DECISION

1. On March 3, 1997, Group Communications, Inc. ("Group") filed a motion for summary decision. The Mass Media Bureau submits the following comments in support.

2. Group seeks favorable summary decision of the following issues specified in the *Order to Show Cause and Hearing Designation Order (OSC)*, 11 FCC Rcd 12252 (MMB 1996):

(1) To determine whether Group Communications, Inc. has the capability and intent to expeditiously resume the broadcast operations of KRGQ(AM), consistent with the Commission's Rules.

(2) To determine whether Group Communications, Inc. has violated Sections 73.1740 and/or 73.1750 of the Commission's Rules.

¹ By letter dated March 4, 1997, the call sign for the station was changed from KRGQ to KRGQ, effective March 10, 1997. For administrative convenience, we will refer to the station as KRGQ.

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(3) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether Group Communications, Inc. is qualified to be and remain the licensee of KRGQ(AM).

Background

3. Group is the licensee of KRGQ(AM), West Valley City, Utah. On January 31, 1995, Group suspended broadcast operations upon eviction from its transmitter site. On February 8, 1995, Group requested special temporary authorization ("STA") to remain silent. In its request, Group stated that it was in the process of establishing operations at a new transmitter location on a temporary basis and that it would submit a Form 301 application and an STA request as soon as its plans were finalized. On February 13, 1997, the Commission granted Group permission to remain silent through May 13, 1995.

4. On May 12, 1995, Group requested additional time to remain silent, which was granted on May 19, 1995. On August 16, 1995, Group again requested continued authority to remain off the air. This time Group advised that its search for a new site had reached the stage where it was negotiating with a landowner. However, Group also stated that it was considering a change in its community of license, which would necessitate a site change to an identified site. The Commission granted Group's request and extended its STA to February 24, 1996. The Commission also informed Group that: "Any further requests for extension of this authority must be accompanied by a detailed summary of steps taken to return the station to on-air operations."²

² In its October 9, 1996, letter transmitting its minor modification application, Group attached the August 24, 1995, Commission STA grant as well as Group's February 20, 1996, request for continued authority to remain silent. The three letters referenced herein are attached.

5. Finally, on February 20, 1996, Group sought a further extension of its STA, advising that it had made arrangements for a new transmitter site and had applied for a building permit. Group also stated that it would apply for the site within 45 days. However, by the time of the *OSC*, no such application had been filed. The Commission did not grant Group's February 20, 1996, extension request.

6. On October 10, 1996, subsequent to the issuance of the *OSC* and nearly 8 months after its February 20, 1996, letter to the Commission, Group filed a minor change application to move to its new transmitter site (BP-961010AB). In order to correct certain technical deficiencies, Group amended its application on December 4, 1996. That application was granted on December 10, 1996. On February 1, 1997, KRGQ resumed broadcast operations, and on February 13, 1997, Group filed its license application for its new site (BL-970213AC).

Discussion

7. Section 1.251 of the Commission's Rules provides that the presiding judge may grant a motion for summary decision only in the absence of a genuine issue of material fact for determination at the hearing. See New Broadcasting Corp., 44 FCC 2d 386 (Rev. Bd. 1973); Salem Broadcasting Co., 30 RR 2d 995 (ALJ 1974). In order to sustain such a motion, the burden is on the moving party to demonstrate that no genuine issue as to any material fact remains and that it is otherwise entitled to summary decision. Telecorpus Inc., 30 RR 2d 1641, 1644 (ALJ 1974). Therefore, it must be established that "the truth is clear,"

that "the basic facts are undisputed," and that "the parties are not in disagreement regarding material factual inferences that may be properly drawn from such facts." Big Country Radio, Inc., 50 FCC 2d 967 (Rev.Bd. 1975). It is the Mass Media Bureau's position that no genuine issues of any material fact remain.

8. Issue (1) seeks to determine whether Group has the capability and intent to expeditiously resume the broadcast operations of the station consistent with the Commission's Rules. Given that Group relocated to a new transmitter site, constructed new facilities and resumed broadcasting, it should be concluded that Group has the capability and intent to resume broadcasting. Issue (1) should be resolved in Group's favor.

9. Issue (2) seeks to determine whether Group has violated Section 73.1740 and/or Section 73.1750 of the Commission's Rules. Pursuant to Section 73.1740, Group was obligated to submit an informal written request to remain silent when it was unable to continue station operations due to circumstances beyond its control. Pursuant to Section 73.1750, Group was required to notify the Commission of permanent discontinuance of station operation and forwarded the station's license to the Commission for cancellation only if Group intended to permanently discontinue operation of KRGQ.

11. With respect to Group's compliance with Section 73.1740 of the Commission's Rules, the Bureau submits that the proper conclusion is that willful and repeated violations occurred. While Group submitted several requests which were granted, its last request did not

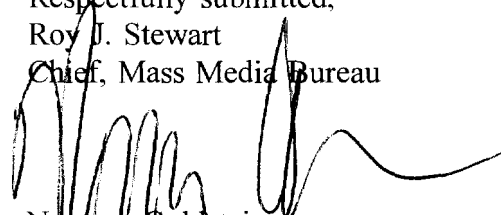
establish that its continued silence was due to circumstances beyond its control. To the contrary, that request presented no reason why Group could not have returned KRGQ to the air during the period of its most recent STA (August 24, 1995 to February 24, 1996). Further, contrary to Group's argument, staff inaction on its February 1996 request for continued authority to remain silent does not constitute a grant of the request. Thus, from February 24, 1996 until February 1, 1997, Group was off the air without authority. Accordingly, it should be concluded that Group violated Section 73.1740.

12. Concerning Section 73.1750 of the Commission's Rules, Group's relocation of its transmitter, and its return to the air indicate that Group never intended to discontinue operation of KRGQ. It therefore appears that Group did not violate Section 73.1750 of the Rules.

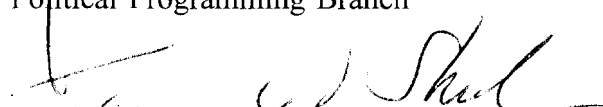
13. Issue (3) seeks to determine whether Group is qualified to be and remain the licensee of KRGQ. Group's resumption of broadcasting on KRGQ indicates that it is qualified to be and remain the station's licensee. The ultimate decision for summary decision in this case is whether Group's license to operate KRGQ(AM) should be renewed. Group willfully and repeatedly violated Section 73.1740 of the Commission's Rules, but the violations, when considered in light of Group's returning Station KRGQ(AM) to the air, do not justify revocation of license. See Chester Broadcasting Company, Inc., FCC 97 D-92, released February 5, 1997; Quality Broadcasting, Inc., FCC 97 D-03, released February 24, 1997. Therefore, Issue (3) should be resolved in Group's favor.

14. In sum, the Bureau supports summary decision of the issues as discussed and termination of this proceeding.

Respectfully submitted,
Roy J. Stewart
Chief, Mass Media Bureau



Norman Goldstein
Chief, Complaints &
Political Programming Branch



James W. Shook
Attorney
Mass Media Bureau

Federal Communications Commission
2025 M Street, N.W.
Suite 7210
Washington, D.C. 20554


March 17, 1997

CERTIFICATE OF SERVICE

Natalie Moses, a secretary in the Complaints & Political Programming Branch, Mass Media Bureau, certifies that she has on this 17th day of March 1997, sent by regular United States mail, copies of the foregoing "Mass Media's Comments in Support of Motion for Summary Decision" to:

Harry C. Martin, Esq.
Andrew S. Kersting, Esq.
Fletcher, Heald & Hildreth, P.L.C.
1300 N. Seventeenth Street, 11th Floor
Rosslyn, Virginia 22209

Administrative Law Judge Joseph Chachkin (by Hand)
Federal Communications Commission
2000 L Street, N.W.
Washington, D.C.. 20554



Natalie Moses

ATTACHMENTS

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OF COUNSEL
EDWARD A. CAINE*

WRITER'S NUMBER
(703) 812-

October 9, 1996

0415

BY FEDERAL EXPRESS

Federal Communications Commission
Mass Media Services
Post Office Box 358190
Pittsburgh, PA 15251-5190

Re: Station KRGQ(AM), West Valley City, Utah
SILENT STATION -- EXPEDITED CONSIDERATION REQUESTED

Dear Sir/Madam:

Transmitted herewith in triplicate on behalf of Group Communications, Inc. is an application for minor modifications to the authorization of Station KRGQ, West Valley City, Utah. A filing fee check in the amount of \$690 accompanies this application.

Please note that Station KRGQ has been authorized to remain silent. The Commission's last silence authorization, dated August 24, 1995, and Group's timely renewal request, dated February 20, 1996, are attached hereto. The February 20 request has never been acted upon; thus, KRGQ's silence authority remains in good standing. See 47 USC §307(c)(3) pertaining to continuation of licenses pending FCC consideration of extension or renewal requests. Moreover, processing of the application submitted today is essential to accommodate the resumption of operations by Station KRGQ before the February 7, 1997 statutory deadline for such a resumption. Group anticipates responding to the Order to Show Cause and Hearing Designation Order, DA 96-1612 (released September 27, 1996) through a summary decision request once operations resume at the transmitter site proposed in the application.

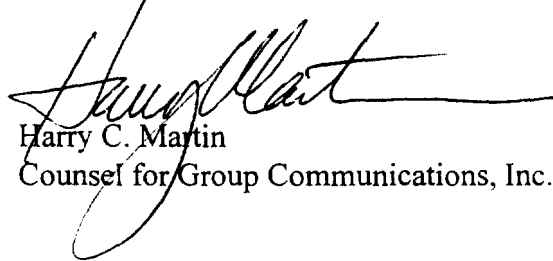
Please date-stamp the enclosed courtesy copy and return it to us in the self-addressed, postage-prepaid envelope provided.

FLETCHER, HEALD & HILDRETH, P.L.C.

Federal Communications Commission
October 9, 1996
Page 2

Should any question arise concerning these matters, please communicate with the undersigned.

Very truly yours,



Harry C. Martin
Counsel for Group Communications, Inc.

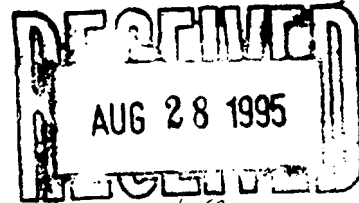
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Enclosure

cc: ☒ Mr. Norman Goldstein, FCC (w/encl.)
Mr. James Crutchfield, FCC (w/encl.)

August 24, 1995 Silence Authorization
(to Expire February 24, 1996)

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

AUG 24 1995



In Reply Refer To: *NA*
8910 - SML
Stop Code 1800B2

Harry C. Martin
Reddy, Begley, Martin & McCormick
1001 22nd Street, N.W., Suite 350
Washington, D.C. 20037-1803

In re: KRGQ(AM)
West Valley City, Utah

Dear Sir or Madame:

This letter concerns your pending request for authority to remain silent. Temporary authority is hereby granted for the above-referenced station(s) to remain silent for six months from the date of this letter.

Any further requests for extension of this authority must be accompanied by a detailed summary of steps taken to return the station to on-air operations.

On December 11, 1991, the Commission adopted a Report and Order (copy attached) which amended Part 1 of the Commission's Rules, to implement Section 5301 of the Anti Drug Abuse Act of 1988. Pursuant to the Report and Order, any requests for extension of this authority must be accompanied by a certification that neither the applicant nor any party to the request is subject to a denial of Federal benefits under Section 5301. Please use the attached certification page to comply with this requirement, if you need to request an extension of this authority.

It will be necessary to maintain prescribed tower lighting in accordance with the station's license authorization. If an extension is not required, you are requested to notify the Commission, in writing, of the exact date the station resumes on-air operations.

In the event that any AM station remains silent for a period over 6 months, it will be necessary to file with the Commission, prior to returning the station to on-air operations, an FCC Form 302 for direct measurement of power which should include a partial proof of performance for stations with directional antennas.

Sincerely,

for
James R. Burtle
Chief, AM Branch
Audio Services Division
Mass Media Bureau

Attachments

February 20, 1996 Silence Authority Renewal Request
(Still Pending)

ANN BAVENDER*
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THIS IS TO
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

0415

February 20, 1996

BY HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Station KRGQ(AM), West Valley City, Utah
Extension of Silence Authority

Dear Mr. Caton:

On behalf of Group Communications, Inc., licensee of Station KRGQ, West Valley City, Utah, this is to request a 6-month extension of the licensee's silence authority, which expires February 24, 1996.

Group Communications has made arrangements for a new transmitter site in West Valley City and, in January, applied for a building permit. It is anticipated that an FCC Form 301 will be filed within 45 days. Under these circumstances, an additional 6-month extension is needed and requested.

Group Communications, Inc. has authorized us to represent that no party to this request is subject to a denial of federal benefits pursuant to Section 5301 of the Federal Anti-Drug Abuse Act.

Should any question arise concerning this matter, please communicate with the undersigned.

Very truly yours,

Harry C. Martin
Counsel for Group Communications, Inc.

HCM:mah

cc: Ms. Sharlene Lofty, FCC